IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3496 OF 2005

Manish Shah ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Nitin Pradhan for the Applicant
Mr.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 17,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Applicant is a Director of a limited company i.e. M/s. M.C.I. Securities Pvt.Ltd. An offence has been registered under Sections 409, 420, 465, 467 read with Section 34 of the Indian Penal Code at the Economic Offence Wing, Crime Branch C.I.D., Mumbai. One of the other Directors of the company Shri Ashit Shah who is the real brother of the Applicant has already been arrested and across bar it is stated that the Application for grant of bail made by Ashit Shah has been rejected by the learned Sessions Judge.

2. Shri Pradhan, learned Counsel appearing for the Applicant stated that the Applicant has played no role in the alleged offence. All the transactions are made under the signatures of the Applicant's brother who is already in custody. He pointed out that the withdrawals are made by his brother and he has hardly withdrawn any amount. He invited my attention

to the private complaint filed by the Applicant which is annexed to this Application. He submitted that the Applicant has played no role in the offence and he is cooperating with the investigating agency. He submitted that a Civil suit has been filed by one M. Corporation for recovery of the amount against the company and directors.

3. Shri Gadkari, learned A.P.P. states that there is a large scale scam involved to the tune of Rs.50 crores which is being investigated by the Investing agency. By drawing my attention to certain material collected during the investigation, he submitted that both the Applicant and his brother Ashit are trying to shift the blame. He submitted that the number of transactions made by the Applicant involve large number of investors and considering the magnitude of the offence involving the sum of Rs.50 crores, the custodial interrogation of the Applicant will be necessary for ascertaining the role played by him.

4. I have considered the rival submissions. The alleged offence involves a scam of about Rs.50 crores which is allegedly the amount invested by large number of investors with the company of which the Applicant is a Director. The Applicant is a Director along with his brother Ashit and his father. As stated earlier his brother is in custody. Considering the magnitude of the offence and large number of transactions involved, this is a fit case where custodial

interrogation of the Applicant will be required. Merely because a case is made out by the Applicant that he has not withdrawn any amount is no ground to grant protection to the Applicant. The Apex Court in a recent Judgment reported in (2003) 8 S.C.C. page no.77 (Bharat Chaudhary & another vs. State of Bihar and another) held that the only factors to be taken for consideration for grant of anticipatory bail are the gravity of offence and the need for custodial interrogation.

5. In the present case considering the gravity of offence it cannot be said that custodial interrogation is not necessary. The Apex Court held that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is armed with an order under Section 438. Hence, no case is made out. Application is rejected.

6. At this stage, Shri Pradhan, learned Counsel appearing for the Applicant submitted that the Applicant may be granted time to surrender to the Investigating Agency. Since the Applicant was protected during the pendency of the Application, time to surrender deserves to be granted till 20th June 2005. Shri Pradhan also states that till the time he surrenders, he will attend the concerned police station as directed by this court.

JUDGE